

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 572 of 1998

in

SPECIAL CIVIL APPLICATION No 1162 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MERCHANTS PROTECTION ASSOCIATION

Versus

JAMNAGAR MUNICIPAL CORPORATION

Appearance:

MR YS LAKHANI for Appellants
MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 15/05/98

ORAL JUDGEMENT (Per Dave,J.)

Appeal admitted. Mr. Nanavaty waives service of

notice of admission. In the facts and circumstances of the case and with the consent of the parties, the matter is taken up for final hearing.

This appeal is raised against an order passed by the learned Single Judge of this Court in Spl.C.A no.1162/98 on 24th February, 1998.

The Spl.C.A. was preferred by the present appellants praying the following reliefs:

(B) Allow this Special Civil Application by issuing a writ of mandamus or any other appropriate writ, order or direction to the respondent Corporation to strictly follow the provisions of Jamnagar Municipal Corporation Octroi Rules in its true spirit with regard to the recovery of the amount of Octroi if at all leviable under the law from the petitioner.

(E) Declare that the respondent Corporation has no authority at law to charge any penalty whatsoever on the amount assessed towards payment of Octroi for the period legally countable under the Rules and hold that issuance of any notice for the recovery of penalty to the extent of 10 times or otherwise is illegal, arbitrary to the provisions of the Rules and violative of articles 14 and 19 (i) (g) of the Constitution of India.

The learned Single Judge after hearing both the sides passed the impugned order giving following directions:

"(a) the Municipal Commissioner, Jamnagar shall decide the appeals preferred by the respective petitioners in accordance with law and in case the petitioners have preferred any representations, the same shall be treated as appeals under Rule 9 and the Commissioner shall decide the same in accordance with law after giving the concerned appellants or their authorised agents an opportunity of being heard including an opportunity to lead the evidence in support of their case.

It will be open to the petitioners to contend before the Commissioner that impugned levy and recovery of octroi and/or penalty from the respective petitioners was not in accordance

with the provisions of the Act, Regulations and Rules. It will also be open to the petitioners to contend before the Municipal Commissioner and any other authority that even if the petitioners had failed in paying octroi duty, the petitioners may be faced with the consequences for such non payment in accordance with law, without being required to pay penalty except after conviction by a court of law.

(b) the cheques submitted by the petitioners shall not be encashed till the Commissioner takes the final decision on the representations/appeals.

(c) the Municipal Commissioner and the officers of the Octroi Department of the Jamnagar Municipal Corporation shall follow the procedure prescribed by law, in case of traders/ industrialists who are not willing to act as per the formula contained in the minutes of the meeting held on August 21, 1997 referred to in para 5 above."

The petitioners-appellants being aggrieved by the said order have raised several grounds.

Mr. Lakhani, learned Advocate for the appellants has contended that the Corporation has no power to impose any penalty on Octroi. The so called settlement arrived at between the Corporation and some of the representatives of industries and Chamber of Commerce will not bind the traders as they may not be the members of such Chambers of Commerce or other organizations. It was further contended that the concept of penalty and punishment as contemplated in the so called settlement is foreign to the Bombay Municipal Corporation Act and the Octroi Rules. Reliance is placed on the decision of the Supreme Court in the case of Municipal Corporation, Ludhiana Vs. Commissioner of Patiala Division, Patiala and another, 1995(1) SCC 304 wherein it has been categorically held by the Supreme Court that in case of evasion of Octroi the penalty cannot be imposed by the Municipal Officer. It is only the Court which can decide the question of imposition of penalty or fine upon conviction. Section 116 of the Punjab Municipal Corporation Act is reproduced in that judgment and if it is perused and compared with Section 398 of the Bombay Municipal Corporation Act the glaring feature that emerges is that word " on conviction" present in Section 398 is not to be found in Section 116 of the said Act and in spite of that the Honourable Supreme Court has given a clear verdict that fine/penalty can be imposed only by

the Court on conviction.

Mr. Lakhani appearing for the appellants has drawn our attention to Octroi Rules 6, 7, 8 and 9 to indicate that particular procedure is required to be followed in the event of import of goods and levy of Octroi. If there is a dispute there is again a procedure that is required to be followed and then only after that procedure is followed and verdict is given by Octroi officer that an appeal can be preferred to the Municipal Commissioner as contemplated under Rule 9 sub-rule (9) of the Octroi Rules. He, therefore, submitted that the representations made against the recovery of Octroi and fine in the given case by the officers of the Corporation could not have been directed to be treated as an appeal as has been directed by the learned Single Judge. Mr. Lakhani, therefore, urged that the order of the learned Single Judge may be set aside.

Mr. Nanavaty, learned Advocate for the Corporation has submitted that the Corporation is prepared to collect the Octroi in accordance with law and in the event it is found that there is evasion of Octroi, action as contemplated under Section 398 of the Bombay Municipal Corporation Act would be initiated if deemed proper by the officers concerned. He further stated that in that event the Court concerned will decide the question of fine/penalty.

To this proposition, Mr. Lakhani learned Advocate appearing for the petitioners also concedes. Under these circumstances, without entering into the larger questions involved about the legality of the settlement, authority to enter into settlement, imposition of fine/penalty, we direct that there shall be no stay on recovery of Octroi and there shall be no recovery of fine/penalty without any specific direction of competent Court. It would be open for the parties to raise all contentions before the competent authority/Court. The appeal stands disposed off accordingly. No costs.

(C.K.Thakkar, J.)

(A.L.Dave,J.)

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